

File identification

Resolution of the rights protection procedure no. PT 86/2022, petition against the Foundation for the Open University of Catalonia.

Background

1. On 09/22/2022, the Catalan Data Protection Authority received a letter from Mr. (...) (hereinafter, the person making the claim), for which he made a claim for the alleged disregard of the right to object to the processing of his personal data, which he had previously exercised before the Foundation for the Open University of Catalonia (hereinafter, FIRE).

The claimant provided various documentation relating to the exercise of this right. Among others, the request submitted on 06/17/2022 before the FUOC through which he argued, in literal terms, the following (the emphasis is ours):

- *"I request the opposition to the treatment of my personal data, taking into account that the Foundation for the Open University of Catalonia (hereinafter, FUOC), gave without my consent to the company (...) several letters presented by me before the Secretariat of State of Universities and before the Rector of the FUOC. The list of documents transferred without my authorization and which contained my personal data are those that are (...)"*
- *In short, the UOC irresponsibly and unlawfully gives to anyone, even without being asked, the administrative communications and personal data of its students, ignoring the purpose and consequences of said transfer.*
- *I do not request that the UOC delete the letters sent from the Ministry or the one presented by me to the Rector, what I demand is to exercise my right of opposition to that (...) treat my data. I address the FUOC as responsible for the treatment, being the institution that sent my writings to (...) without my consent and without weighing the uses that the company would make of them.*

In this regard, the now claimant submitted the response of the FUOC which dismisses his right of opposition, among others, based on the following considerations:

- *"The UOC insists that none of your personal data has been communicated to third parties nor has it been used for purposes other than those that were informed (...)"*
- *The purpose of the processing of printing, handling and distribution of official university degrees and European supplements has as a legitimate basis the execution of a contract, as stipulated in art. 6.1 (b) GDPR.*
- *For the treatment you refer to, art. 21 RGPD does not apply, as it does not have as a legitimating basis any of the ones it indicates."*

2. On 09/28/2022, the claim was transferred to the FUOC so that within 15 days it could formulate the allegations it deemed relevant.

3. On 18/10/2022, the FUOC formulated allegations by means of a letter of the same date, in which it explained, in summary, that it was not appropriate to consider its request for the reasons that are transcribed below:

- " *The UOC, as it had repeatedly informed, does not communicate data to third parties with which it has not signed a processing order and this contract exists with (...)(...)*"
- *Secondly, the data have not been used for purposes other than those for which they were informed and which have been established in the contracts that the UOC maintains with its data processors.*
- *Finally, the treatment entrusted to (...)SA by the UOC has as its legitimate basis the execution of a contract (6.1.b General Data Protection Regulation -RGPD- therefore, the faculty of opposition of the interested parties as established in article 21 RGPD, which limits this right of opposition to data subject to treatment based on the provisions of article 6.1 letters b) of), that is, treatment based on a mission of public interest or legitimate interest".*

Finally, the FUOC reiterates the impossibility of estimating the claimant's right of opposition given that the controversial data processing is based on the execution of a contract.

Fundamentals of Law

1. The director of the Catalan Data Protection Authority is competent to resolve this procedure, in accordance with articles 5.b) and 8.2.b) of Law 32/2010, of October 1, of Catalan Data Protection Authority.

2. Article 21 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data and the free circulation thereof (in hereinafter, the RGPD), regarding the right of opposition of the interested person, provides that:

*"1. The interested party has the right to object at any time, for reasons related to his particular situation, to the personal data that concern him being the object of a treatment based on the provisions of article 6, section 1, letters e) or), included the elaboration of profiles on the basis of these provisions. The person in charge of the treatment will stop processing the personal data, unless it proves compelling legitimate reasons for the treatment that prevail over the interests, rights and liberties of the interested party, or for the formulation, exercise or defense of claims.
(...)"*

For its part, article 6.1 of the RGPD provides the following, regarding the legality of the treatment:

*"1. The treatment will only be permitted if at least one of the following conditions is met:
a. the interested party gives his consent for the treatment of his personal data for one or several specific purposes;*

- b. the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of this pre-contractual measures;*
 - c. the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment;*
 - d. the treatment is necessary to protect the vital interests of the interested party or another natural person;*
 - e. the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment;*
 - f. the treatment is necessary for the satisfaction of legitimate interests pursued by the person responsible for the treatment or by a third party, provided that these interests do not prevail over the interests or fundamental rights and freedoms of the interested party that require the protection of personal data, in particular when the a child is interested.*
- The provisions in letter f) of the first paragraph shall not apply to the processing carried out by public authorities in the exercise of their functions.
(...)*

In relation to the rights contemplated in articles 15 to 22 of the RGPD, paragraphs 3 to 5 of article 12 of the RGPD, establishes the following:

- "3. The person in charge of the treatment will provide the interested party with information related to their actions on the basis of a request in accordance with articles 15 to 22, and, in any case, within one month from the receipt of the request. This period can be extended another two months if necessary, taking into account the complexity and the number of applications. The person in charge will inform the interested party of any such extension within one month of receipt of the request, indicating the reasons for the delay. When the interested party submits the request by electronic means, the information will be provided by electronic means whenever possible, unless the interested party requests that it be provided in another way.*
- 4. If the person in charge of the treatment does not comply with the request of the interested party, he will inform him without delay, and no later than one month after receiving the request, of the reasons for his non-action and of the possibility of submitting a claim before a control authority and exercise judicial actions.*
- 5. The information provided under articles 13 and 14 as well as all communication and any action carried out under articles 15 to 22 and 34 will be free of charge. When the requests are manifestly unfounded or excessive, especially due to their repetitive nature, the person in charge may:*
- a) charge a reasonable fee based on the administrative costs incurred to facilitate the information or communication or perform the requested action, or*
 - b) refuse to act in respect of the request.*
- The person responsible for the treatment will bear the burden of demonstrating the manifestly unfounded or excessive nature of the request.
(...)"*

For its part, article 18 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD), determines the following, also in relation to the right to opposition:

"1. The right of opposition, as well as the rights related to automated individual decisions, including the creation of profiles, must be exercised in accordance with what is established, respectively, in Articles 21 and 22 of Regulation (EU) 2016 /679."

In relation to the above, article 16.1 of Law 32/2010, of the Catalan Data Protection Authority, regarding the protection of the rights provided for by the regulations on personal data protection, provides the following:

"1. Interested persons who are denied, in part or in full, the exercise of their rights of access, rectification, cancellation or opposition, or who may understand that their request has been rejected due to the fact that it has not been resolved within the established deadline, they can submit a claim to the Catalan Data Protection Authority."

3. Having explained the applicable regulatory framework, it is then necessary to analyze whether the FUOC resolved and notified, within the period provided for by the applicable regulations, the right of opposition exercised by the person making the claim, since precisely the reason for his complaint that initiated the present procedure for protection of rights, was the fact of not having obtained a response within the period provided for the purpose.

In this regard, it is certified that on 06/17/2022 , a letter from the person here claiming was received by the entity through which he exercised the right of opposition to the processing of his personal data, in the terms indicated in the first antecedent of this resolution.

In accordance with article 12.3 of the RGD, the FUOC had to resolve and notify the request to exercise the requested right within a maximum period of one month from the date of receipt of the request . In relation to the question of the term, it should be borne in mind that in accordance with article 21.3 b) of Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereinafter, LPAC) and article 41.7 of Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia (hereafter, LRJPCat), on the one hand, the calculation of the maximum term in initiated procedures at the instance of a party (as is the case) it starts from the date on which the request was entered in the register of the competent body for its processing. And on the other hand, that the maximum term is for resolving and notifying (art. 21 LPAC), so that before the end of this term the resolution must have been notified, or at least the duly accredited notification attempt (art. 40.4 LPAC).

Well, the FUOC has proven to have responded to the claimant's opposition request on 07/15/2022, within the deadline set for the purpose. Consequently, it must be declared that the FUOC resolved and notified within the deadline the request from which this claim procedure derives.

4. Once the above has been established, it is necessary to analyze the substance of the claim, that is to say whether, in accordance with the precepts transcribed in the 2nd legal basis, it is appropriate in this case to estimate the right of opposition in the terms that tender the person claiming.

Well, for the case at hand, the claimant now exercised his right of opposition before the FUOC to the effect that it did not transfer information relating to his person to the company (...)SA In this regard, the now claimant presented different circumstances which, in his opinion, would be sufficient to motivate the exercise of the right to object to the processing of his personal data by (...)SA In essence, he argued that the entity here claimed would have unlawfully transferred his personal data to (...)SA, and affirmed that the FUOC " *transfers to anyone, even without asking, irresponsibly and illegally, the administrative communications and personal data of their students*" .

In turn, the claimed entity has alleged that the processing of personal data in relation to which the claimant now exercises the right of opposition, would be justified given that (...)SA holds the status of in charge of the treatment of the FUOC. Also, the claimed entity insists that it does not communicate personal data to third parties illegally.

For what is of interest here, this Authority cannot ignore the existing contractual link between the FUOC and (...)SA In this regard, it should be noted that, within the framework of rights protection procedure number 144/2021, urged for now claimant against the FUOC, it was proven, on the one hand, that the FUOC acts as the person responsible for the processing of the now claimant's data, and that (...)SA, as the company awarded the contract for the provision of printing service, manipulation and distribution of official university degrees, European supplements to the degree and FUOC's own degrees, signed the corresponding data processor contract, with the now claimed, in accordance with articles 28 RGPD and 33 LOPDGDD.

That's how things are, article 4.7 of the RGPD states that it is responsible for the treatment of personal data " *the natural person or legal public authority, service or organism that, alone or together with others, determines the ends and means of the treatment; if the Law of the Union or of the Member States determines the purposes and means of the treatment, the person responsible for the treatment or the specific criteria for his appointment may be established by the Law of the Union or of the Member States* . And, regarding the person in charge of the treatment, article 4.8 RGPD provides that this condition is held by " *the natural or legal person, public authority, service or other organism that treats personal data on behalf of the person responsible for the treatment*".

From the above it can be inferred that, on the one hand, the data controller – in this case, the FUOC – is the one who determines the purposes and means of processing personal data and that, on the other hand, the processor - in this case, (...)SA - processes personal data on behalf of the controller.

In relation to the above, regarding the processing of personal data carried out by a data controller, article 33.1 of the LOPDGDD provides for the following (the emphasis is ours):

" Access by a processor to personal data that is necessary for the provision of a service to the person in charge is not considered a communication of data as long as the provisions of Regulation (EU) 2016/ 679, this Organic Law and its implementing rules".

In accordance with this precept, the transfer of personal data by the FUOC to (...)SA does not properly constitute a transfer or communication of personal data, given that (...)SA holds the position of being in charge of the treatment.

Having said that, the Authority shares the criterion of the entity claimed here according to which, the legal basis that legitimizes the processing by (...)SA of the personal data of the claimant here on behalf of the FUOC is, precisely, the execution of the mentioned contract for the provision of the service of printing, handling and distribution of official university degrees, European supplements to the degree and FUOC's own degrees. In this sense, it is covered by article 6.1 of the RGPD, section b), when it provides that the processing of personal data will be lawful when it is " necessary for the execution of a contract in which the interested party is a party or for the application to his request for pre-contractual measures ". And, in this respect, it is not superfluous to add that the controversial processing of personal data is related to the object of the aforementioned contract, concluded between the FUOC and (...)SA, for which reason, its unlawful character must be ruled out lawful

Having established the above, article 21 of the RGPD provides for the right of the interested person to object, at any time, for reasons related to their particular situation, to their personal data being processed, when the said processing is carried out to fulfill a mission carried out in the public interest, to exercise public powers or to satisfy legitimate interests, including the creation of profiles - article 6.1 sections e) and f) of the RGPD-. However, in the present case, the legal basis that legitimizes the controversial treatment is, as has been said, the execution of a contract - article 6.1 b) of the RGPD - and, to the extent that this basis does not have fits within the assumptions provided for in article 21 RGPD, for the exercise of the right of opposition, the present claim for the protection of rights should be dismissed.

For all this, I resolve:

1. Dismiss the guardianship claim made by Mr. (...) against the Foundation for the Open University of Catalonia.
2. Notify this resolution to the Foundation for the Open University of Catalonia and the person making the claim.
3. Order the publication of the resolution on the Authority's website (apdcat.gencat.cat), in accordance with article 17 of Law 32/2010, of October 1.

Against this resolution, which puts an end to the administrative process in accordance with articles 26.2 of Law 32/2010, of October 1, of the Catalan Data Protection Authority and 14.3 of Decree 48/2003, of 20 February, by which the Statute of the Catalan Data Protection Agency is approved, the interested parties can file, as an option, an appeal for reinstatement before the director of the Catalan Data Protection Authority, in the period of one month from the day after its notification, in accordance with the provisions of article 123 et seq. of the

LPAC or to directly file an administrative contentious appeal before the administrative contentious courts of Barcelona , in the period of two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, regulating administrative contentious jurisdiction.

Likewise, the interested parties may file any other appeal they deem appropriate for the defense of their interests.

The director,

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